

SUSAN E. MITCHELL

IBLA 80-14

Decided February 26, 1981

Appeal from a decision of the California State Office, Bureau of Land Management, declaring null and void The Victory Mining Claim. CA 6390.

Affirmed.

1. Mining Claims: Withdrawn Land -- Withdrawals and Reservations:
Reclamation Withdrawals

A mining claim located on land previously withdrawn from appropriation under the mining laws by a first form reclamation withdrawal is null and void ab initio.

APPEARANCES: Susan E. Mitchell, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Susan E. Mitchell has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated August 30, 1979, declaring The Victory Mining Claim, CA 6390, null and void ab initio. The claim, situated in E 1/2 NE 1/4 SE 1/4 sec. 23, T. 9 N., R. 10 E., Mount Diablo meridian, El Dorado County, California, was located July 20, 1943. The claim was amended on November 18, 1954.

According to BLM, all of the NE 1/4 SE 1/4 of sec. 23 was included in the Federal Power Commission Order of June 20, 1924, for Power Project No. 514 and in Secretarial Order of January 15, 1942, for the Nashville Reservoir Site, Central Valley Project of the Bureau of Reclamation (now the Water and Power Resources Service). 1/ The orders

1/ On November 28, 1941, it was recommended to the Secretary of the Interior that certain lands including the lands in question be "withdrawn from public entry under the first form withdrawal as provided in sec. 3 of the Act of June 17, 1902 (32 Stat. 388)" for inclusion in

effectively withdrew the land from all forms of appropriation under the public land laws, including the mining laws. Therefore, BLM declared that the land claimed was not subject to location on July 20, 1943, or November 18, 1954, and the attempted location was declared null and void ab initio.

In her statement of reasons for appeal, appellant admits that sec. 23 is covered by the first form reclamation withdrawal. However, she states that pursuant to the Act of April 23, 1932, it is possible to make application for restoration to mineral entry. She alleges that Restoration Order No. 1223, dated September 2, 1947, restored the land to mineral entry and that the land was the subject of a favorable determination by the Federal Power Commission in Docket No. DA-638-California, dated November 22, 1946.

Restoration Order No. 1223, dated September 2, 1947, to which appellant refers, restored for mining purposes the land in question, which was withdrawn by the Federal Power Commission Order of June 20, 1924. The restoration order was made "[p]ursuant to the determination of the Federal Power Commission (DA-638, California)." The order, however, was made "subject to * * * the provisions of existing withdrawals." The order stated "[t]he land is included in the first form reclamation withdrawal made January 15, 1942, pursuant to the Act of June 17, 1902 (32 Stat. 388)." Clearly, the first form reclamation withdrawal was not affected by Restoration Order No. 1223.

The Act of April 23, 1932, 43 U.S.C. § 154 (1976), provides in pertinent part:

Where public lands of the United States have been withdrawn for possible use for construction purposes under the Federal reclamation laws, and are known or believed to be valuable for minerals and would, if not so withdrawn, be subject to location and patent under the general mining laws, the Secretary of the Interior, when in his opinion the rights of the United States will not be prejudiced thereby, may in his discretion, open the land to location, entry, and patent under the general mining laws * * *.

[1] Pursuant to this statutory provision the Secretary may restore to mineral entry lands previously withdrawn for reclamation

fn. 1 (continued)

the Nashville Reservoir Site, California. The Commissioner, General Land Office, concurred in the recommendation on January 7, 1942. The Under Secretary approved the recommendation on January 15, 1942, and notice was published in the Federal Register on January 28, 1942 (7 FR 568).

purposes. However, on the dates appellant's predecessor in interest attempted to locate the claim there had been no such restoration. ^{2/} The Board has consistently held that a mining claim located on land withdrawn from mineral entry by a first form reclamation withdrawal order is properly declared null and void ab initio. Everett E. Willmarth, 32 IBLA 145; J. P. Hinds, 25 IBLA 67, 83 I.D. 275 (1976); Russ Journigan, 16 IBLA 79 (1974).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge

^{2/} Nor does it appear from the record that the land has ever been restored to entry. Departmental regulations at 43 CFR Subpart 3816 contain the procedures for a petition for restoration to mineral entry of lands withdrawn for reclamation purposes.

